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PLT  
~~Riverhead~~ | 7456

**LABOR CONTRACT**

**Between the**

**TOWN OF RIVERHEAD**

**and the**

**RIVERHEAD TOWN POLICE**

**SUPERIOR OFFICERS**

**ASSOCIATION, INC.**

**1/1 12/31**  
**2008-2011**

**RECEIVED**  
NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD

NOV 04 2009

**ADMINISTRATION**

## **TABLE OF CONTENTS**

<b><u>ARTICLE #</u></b>	<b><u>ARTICLE TITLE</u></b>	<b><u>PAGE</u></b>
ARTICLE I	Recognition	
ARTICLE II	Check Off	
ARTICLE III	Hospitalization and Medical Insurance	
ARTICLE IV	Holiday	
ARTICLE V	Additional Veterans Holidays	
ARTICLE VI	Recall and Standby	
ARTICLE VII	Death Leave	
ARTICLE VIII	Overtime and Night Differential	
ARTICLE IX	Vacation	
ARTICLE X	Personal Days	
ARTICLE XI	Longevity Pay	
ARTICLE XII	Excuse from Duties of the SOA's Representatives	
ARTICLE XIII	Duty Tours	
ARTICLE XIV	Supplemental Death Benefit	
ARTICLE XV	Severance and Death Benefits	
ARTICLE XVI	One Year Final Average Benefits	
ARTICLE XVII	Non-Conflict Rule	
ARTICLE XVIII	Working Conditions	
ARTICLE XIX	Re-Negotiation	
ARTICLE XX	Clothing and Equipment	
ARTICLE XXI	Sick Leave	
ARTICLE XXII	Annual Physical Examination	
ARTICLE XXIII	Outside Employment	
ARTICLE XXIV	No Strike Pledge	
ARTICLE XXV	Bill of Rights	
ARTICLE XXVI	Legislative Action Requirement	
ARTICLE XXVII	Binding Effects	

ARTICLE XXVIII	Partial Invalidity
ARTICLE XXIX	Vests
ARTICLE XXX	Deferred Compensation Plan
ARTICLE XXXI	Education Incentive
ARTICLE XXXII	Salaries
ARTICLE XXXIII	Drugs and Alcohol
ARTICLE XXXIV	Random Drug and Alcohol Testing
ARTICLE XXXV	Grievance Procedure
ARTICLE XXXVI	Probationary Period
ARTICLE XXXVII	Jury Duty
ARTICLE XXXVIII	General Municipal Law Section 207-c
ARTICLE XL	Retention of Service Weapon Upon Retirement
ARTICLE XLI	Lag Payroll

AGREEMENT made this 12th day of December 2008, by and between THE TOWN OF RIVERHEAD, a municipal corporation, having its principal office at 200 Howell Avenue, Riverhead, New York, hereinafter referred to as the "Town", and THE RIVERHEAD TOWN POLICE SUPERIOR OFFICERS ASSOCIATION, INC., having its principal office at 210 Howell Avenue, Riverhead, New York, hereinafter referred to as either the "SOA" or the "Employee".

### **ARTICLE I – Recognition**

The Town recognized the SOA as the sole bargaining agent and representative for all Sergeants, Detective Sergeants and Lieutenants employed in the Police Department in the Town of Riverhead, Suffolk County, New York. No SOA member shall be an officer (specifically shall not be President, Vice President, Secretary or Treasurer) nor shall any Employee be a member of the negotiation team of any other bargaining organization that negotiates with the Town.

### **ARTICLE II - Check Off**

A. The Town shall deduct from the wages of the Employee and pay over to the SOA the dues and other obligations due to the SOA by such Employees who have authorized the Town to do so by individual authorizations in writing. These deductions shall be taken out of the Employee's biweekly paycheck in equal installments.

B. The SOA shall notify, in writing, the Town and any members of the unit covered by this Agreement who are not members of the SOA of the "agency shop" implementation. This notification shall inform those Employees who are not presently members of the SOA that they have the right to join the SOA. The notice shall further inform the Employees that those who do not choose to join the SOA shall have deducted from their salary an agency shop fee which shall be an amount equivalent to the amount of dues payable by a member.

C. An agency shop fee shall be deducted from the salary of Employees who do not choose to become members and from the salary of Employees whose membership has not yet become effective, provided the SOA furnished the Town with a list of the names and titles of such Employees and with proof of service of the written notice specified in Section (A) of this Article II.

D. Every Employee who does not join the SOA at the time of appointment, but whose membership has not yet become effective, shall have an agency shop fee deducted, if the Employee joins the SOA, the agency shop fee deduction shall be discontinued on the same date the dues checkoff authorization card takes effect and is received by the Town with written notice from the SOA of the Employee's status.

E. An Employee who terminates SOA membership shall have deducted from his/her salary an agency shop fee. This agency shop fee shall be effective on the same date as the revocation of authorization for dues deduction takes effect, with notice thereof, in writing, received by the Town from the SOA.

F. The Agency shop fee for each Employee covered by this Agreement shall be deducted from the Employee's regular paycheck and shall be in the amount equal to the periodical dues levied by the SOA for Employees in the affected titles as currently checked off by the Town. The SOA shall certify to the Town the appropriate amount or rate for the agency shop fee deduction.

G. The SOA shall have the exclusive right to the deduction and transmittal of the agency shop fee for Employees. The Town shall transmit, no later than the first working day of the second month following the month in which the agency shop fee has been collected, the total of such agency shop fee deductions collected at the same rates as are provided for the checkoffs of membership dues.

H. Changes in the amount of an agency shop fee deduction shall be effective at the same times as is the practice with changes in membership dues deductions, but no fewer times than the first payroll

subsequent to January 1 or July 1, following the date on which notice of such change is furnished.

Request for changes in the rate of dues deductions shall be deemed to be a request for a change in the agency shop fee.

I. Employees having the agency shop fee deducted shall be notified, in writing by the SOA of the change in the amount of the agency shop fee deductions and the date on which such new deduction will begin. A copy of this notice shall be sent to the Town.

J. Agency shop fee deductions will be applied to regular payrolls only.

K. In cases of unearned salaries or wages of Employees covered by this Agreement refunded to appropriation accounts, and in cases of salaries or wages of Employees covered by this Agreement transferred to "UNCLAIMED" accounts, necessary adjustments in agency shop fee accounts will be made by recovery from available unpaid SOA agency shop fee fund balances and returned to the Town.

L. The SOA shall refund to the Employees any agency shop fees wrongfully deducted and transmitted to the SOA.

M. No assessments of any kind or nature will be collected through the agency shop fee deduction.

N. No arrears of any kind or nature will be collected through the agency shop fee deduction.

O. The Town shall not be liable in the operation of the agency shop fee deductions for any mistake or error of judgment or any other act of omission or commission and the SOA agrees to hold the Town harmless against any claim whatsoever arising out of the deduction and transmittal of said agency shop fee to the SOA.

P. Agency shop fee deductions will be considered last in arithmetical sequence when residual amount of pay after other deductions is less than the full amount of the agency shop fee deduction and no

fractional amount of agency shop fee deductions will be made nor carried over for deduction in any subsequent payroll period.

Q. The SOA affirms that it has established and is maintaining a procedure which provides for the refund, to any Employee demanding one, of any part of any agency shop fee which represents the Employee's pro rata share of expenditures by the SOA in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. It is expressly agreed that in the event this procedure is discontinued then this Article II, insofar as it relates to agency shop fee deductions, shall be null and void.

R. In the event that any provision of this Article II is found to be invalid, the invalidity shall not impair the validity and enforceability of the remaining provisions of this Article II.

### **ARTICLE III - Hospitalization and Medical Insurance**

#### **A. Medical Insurance**

1. The Town shall pay, on behalf of all Employees, One Hundred Percent (100%) of the cost of either the individual or family (depending on whether the individual is eligible or not) coverage for hospitalization under the Empire Core Plan Plus Enhancements. The plan shall also provide that the Town shall pay for One Hundred Percent coverage for individual Employees who hereafter retire from the Town, and the Town shall pay to the extent of Fifty Percent coverage on the premiums for the retiree's family. The Town will assume One Hundred Percent of the cost of hospitalization for the families of Employees killed in the line of duty until the remarriage of the spouse and the attaining of the age of emancipation of children. Effective December 16, 2008, if two persons are currently receiving (or are eligible to receive) family health coverage benefits through the Town, only one will be permitted to continue to receive family level coverage. In this event, the person whose coverage changes from family to individual coverage will not be entitled to the health insurance buyout. Should that person choose to



decline to receive individual coverage, then that person will be eligible for the buyout of the individual coverage.

2. An Employee may elect to change enrollment in the health insurance plan from family coverage to individual or no coverage, or from individual coverage to no coverage. In this event, the Employee shall receive Forty Five Percent of the savings to the Town, provided the Employee remains in the changed status for a period of 12 consecutive months. Payment shall be made annually thereafter during the June or December first following the end of the 12 month period, provided that the Employee remains in the changed status. Nothing in this provision shall preclude an Employee from re-enrolling in his/her previous coverage within the 12 month period, provided however, that if the Employee does so in fewer than 12 months, no payment shall be made.

3. The Town shall have the option to change health insurance carriers after at least 30 days prior written notice of such intention, provided that; (a) a copy of the proposed replacement coverage's accompany such notice, and (b) the coverage's shall be, in all respects, comparable to or better than that which currently exists.

B. Dental Plan: The Town shall pay, on behalf of all Employees, One Hundred Percent of the cost of either the individual or family plan for dental coverage under the terms provided by the Riverhead Town Dental Plan. Effective December 16, 2008, if two persons are currently receiving (or are eligible to receive) family dental coverage benefits through the Town, only one will be permitted to continue to receive family level coverage. In this event, the person whose coverage changes from family to individual coverage will not be entitled to the dental insurance buyout. Should that person choose to decline to receive individual coverage, then that person will be eligible for the buyout of the individual coverage.

C. Optical Plan: The Town shall pay, on behalf of all Employees, One Hundred Percent of the cost of either the individual or family plan for optical coverage under the Riverhead Town Optical Plan. Effective December 16, 2008, if two persons are currently receiving (or are eligible to receive) family optical coverage benefits through the Town, only one will be permitted to continue to receive family level coverage. In this event, the person whose coverage changes from family to individual coverage will not be entitled to the optical insurance buyout. Should that person choose to decline to receive individual coverage, then that person will be eligible for the buyout of the individual coverage.

#### **ARTICLE IV - Holiday**

A. The Town recognizes the following paid holidays for all Employees:

New Year's Day	Martin Luther King's Birthday	Lincoln's Birthday
Washington's Birthday	Easter Sunday	Memorial Day
Independence Day	Labor Day	Columbus Day
Election Day	Veteran's Day	Thanksgiving Day
Christmas Day		

B. The Employees shall receive no time off for these holidays, but shall be paid an additional day's pay for each of the holidays, according to the daily pay rate of each Employee, which compensation shall be paid covering the first six holidays listed during the period June 15<sup>th</sup> to June 25<sup>th</sup>, and shall be paid the last seven holidays listed on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>. Employees actually working on any of these holidays will be paid an additional one half day's pay for each day. For purposes of computing holiday pay, a 238 day (1904 hours) work year shall be used. Holiday pay shall not be earned by those employees on an unpaid leave of absence, or those employees under suspension for more than 30 consecutive calendar days during the pendency of disciplinary charges.

C. All Employees who become members of the SOA bargaining unit on or after December 16, 2008 shall receive the full compliment of holidays they received immediately prior to joining the unit.

#### **ARTICLE V - Additional Veterans Holidays**

A. An Employee who is a veteran and works on either Memorial Day or Veterans' Day shall have compensation which shall include, in addition to all other entitlements, cash overtime at the rate of time and one half for each hour worked. An Employee who is a veteran and does not work on either Memorial Day or Veterans' Day shall have compensation which shall include, in addition to all other entitlements, one day's pay on a cash basis. For purposes of computing day's pay, a 238 day (1904 hours) work year shall be used.

#### **ARTICLE VI - Recall and Standby**

A. Any Detective Sergeant who is on call duty and, effective January 1, 2006, any Lieutenant directed to serve as the Standby Duty Officer, who is not called in shall be compensated at the rate of two hours for every eight hours so directed. If any Employee is called in while on call duty, the Employee will forego the call duty pay and be compensated under Section (B).

B. An Employee recalled after the Employee has finished his/her tour of duty and is immediately directed to engage in regular police work shall receive a minimum four hours credited as time worked at the applicable overtime rate and shall receive a minimum of two hours credited as time worked at the applicable overtime rate, when required to report to Court or other governmental agency, in direct connection to the Employee's police duties or work. Recalled Employees may be required to work the full amount of the minimum recall for which they are paid.

C. Any fees received by the Employee for appearance before a Court or other governmental agency shall be turned over to the Riverhead Police Department. If the Employee uses his/her own

automobile in traveling to and from court or government agency offices, any mileage allotment shall be retained by the Employee. If a police vehicle is used, the allotment is turned over to the Department.

D. The Town agrees to pay Employees the I.R.S. mileage rate then in effect. The Town agrees to provide a police unit, if a unit is available.

#### **ARTICLE VII - Bereavement Leave**

A. Employees shall be entitled to four consecutive working days' leave of absence computed either from the day of death or the day following death at the Employee's option, for death of Employee's spouse, child (including adopted children), father, mother, brother, sister, parents, parents-in-law, grandparents, grandparents-in-law, grandchildren, daughter-in-law, brother-in-law, sister-in-law, son-in-law, step-brother, step-sister or stepchild.

#### **ARTICLE VIII - Overtime and Night Differential**

A. All Employees who work in excess of their basic work week or tour of duty [40 hours a week, or eight hours a day] shall be paid overtime compensation at the rate of one and one half times the Employee's regular entitlement.

B. Night differential compensation for an Employee working three regularly scheduled tours, around the clock or a steady night tour shall be paid \$4,500 annually. Effective January 1, 2009, employees who are regularly assigned to the experimental steady midnight tour shall be paid a differential at the annual rate of \$6,400. Effective January 1, 2010, the differential shall be increased by \$300. Effective January 1, 2011, the differential shall be increased by an additional \$150.

The Sergeant in charge of the CRU/COPE will be eligible for the three tour night differential compensation. Effective January 1, 2009, the Sergeant in charge of the CRU/COPE will be eligible for the two tour rotating differential.

An Employee working two regularly scheduled tours shall be paid \$2,700 annually. Effective January 1, 2009, all Employees, except for Lieutenants, who regularly work a two tour rotating schedule that includes a 3 p.m. to 11 p.m night tour shall be paid two tour rotating differential at an annual rate of \$4,500. Effective January 1, 2009, the two tour rotating differential for Lieutenants shall be \$2,700. Effective January 1, 2010, the two tour rotating differential for all Employees shall be increased by \$100. Effective January 1, 2011, the two tour rotating differential shall be increased by an additional \$100, except for the Lieutenants' two tour rotating differential, which shall be increased by an additional \$900.

An assigned three shift tour of duty shall consist of one set of days, one set of evenings, and one set of nights (to be deleted effective January 1, 2009). An assigned two shift tour of duty shall consist of one set of days and one set of either evenings or nights.

A uniformed Employee assigned as a relief Sergeant shall be entitled to the same payment as Employees assigned to a three tour around the clock duty chart (effective January 1, 2009, the experimental steady midnight tour). This night differential shall be paid semiannually when receiving holiday pay.

This provision shall not be applicable to work performed between 3:00 p.m. and 5:00 p.m. which is part of a regular 8:00 a.m. to 4:00 p.m. or 9:00 a.m. to 5:00 p.m. day tour; or work performed between 6:00 a.m. and 8:00 a.m. which is part of a 6:00 a.m. to 2:00 p.m. or 7:00 a.m. to 3:00 p.m. day tour. This shall be applicable to work performed between 3:00 p.m. and 4:00 p.m. which is part of a 3:00 p.m. to 11:00 p.m. night tour and applicable to work performed between 2:00 p.m. and 4:00 p.m. which is part of a 2:00 p.m. to 10:00 p.m. night tour.

C. In calculating overtime under any provision of this Agreement the longevity part of the base shall be frozen at the December 31, 1978 longevity position. For all overtime at or above the applicable FLSA cap, longevity pay shall be included in the base as required by law.

D. Subject to Town Board meeting dates, the Town shall pay overtime in separate checks on a monthly basis. Effective June 27, 2002, overtime is to be included in a timely submitted biweekly time sheet, and will then be paid in the next biweekly paycheck.

E. For purposes of computing overtime, a 238 day (1904 hours) work year shall be used.

### **ARTICLE IX – Vacation**

A. The vacation schedule shall be as follows:

Over two years of service, 17 working days.

Over five years of service, 19 working days.

Over 10 years of service, 24 working days.

Over 15 years of service, 27 working days.

Over 21 years of service, 30 working days.

Vacation may carry into the following year a maximum of up to two years of accrual and in no event may the maximum be exceeded. Effective June 27, 2002, in no event shall an Employee earn more vacation time as a unit member then he/she did as a member of another Town bargaining unit. All Employees who become members of the SOA bargaining unit on or after December 16, 2008 shall receive the full compliment of vacation days they received immediately prior to joining the unit.

B. An employee who chooses not to utilize all of his/her annual vacation allotment may sell back the unused days by filing a written notice with the Chief or his/her designee prior to the 15<sup>th</sup> day of an even numbered month, in which case those days shall be paid as wages when receiving overtime pay. Payment shall be at straight time based on a 238 day (1904 hours) work year. This election may not exceed three days per month. In no event shall this payment be construed as an increase in base pay.

C. Vacation shall be credited to an Employee for each calendar year on January 1, except in the year of his/her retirement, when vacation will be prorated and credited at the end of each full month worked. Effective January 1, 2009, vacation shall be credited to an Employee for each calendar day on the anniversary date of employment, except in the year of his/her retirement, when vacation will be prorated and credited at the end of each full month worked. For the year 2009, the vacation days that an employee is entitled to receive as of his/her anniversary date shall be prorated from January 1 to the employee's anniversary date. An employee shall not be permitted to exceed his/her prorated vacation allotment if the time cannot be covered by the employee's accrued time. On the employee's anniversary date, he/she shall receive the balance of his/her vacation day entitlement. In no event shall an Employee be paid for more than 60 vacation days upon retirement.

#### **ARTICLE X - Personal Days**

A. An Employee shall be granted four days personal leave per annum for conduct of personal business. Employees may accumulate personal days for three years. Personal business shall be defined as those matters relating to a personal, legal, family, religious or household need which cannot be performed or attended to by the officer during times other than the regularly scheduled tour of duty of the officer. Except in cases of emergency and full mobilization of the Department, as determined by the Chief at his/her sole discretion, or if the Department is unable to fill the resulting vacancy through overtime, all personal leave requests that are submitted seven or more days prior to the requested date shall be granted. If the request for a personal day is submitted less than seven days before the requested day or if another Employee has already been granted the same day off, the request for personal leave shall be granted at the discretion of the Chief or designee. All Employees who become members of the SOA bargaining unit on or after December 16, 2008 shall receive the full complement of personal days they received immediately prior to joining the unit.

### **ARTICLE XI - Longevity Pay**

A. Longevity payments shall be based on the present year's salary and the percentages shall be taken therefrom. Employees shall be paid longevity based on the following schedule:

Four percent of the total base pay after 10 years of service.

Six percent of the total base pay after 15 years of service.

Seven percent of the total base pay after 18 years of service.

### **ARTICLE XII - Excuse from Duties of the SOA's Representatives**

A. During the negotiations by the representatives of the SOA and the employer for renewal, or change, of the Agreement, the negotiators for the SOA shall be excused from their duties in the Police Department, provided such period of negotiations are reasonable and necessary. The negotiators for the SOA shall not exceed four members, exclusive of counsel and stenographer.

B. Members of the SOA or delegates to any bona fide police organization of which the SOA is an associated member, upon approval of the Chief of Police, shall have the right to attend meetings and conventions to which the SOA belongs, in pursuance of their obligations as officers or delegates of the SOA without loss of pay or time and in accordance with requirements of the Audit and Control Bureau of the New York State Comptroller's Office.

### **ARTICLE XIII - Duty Tours**

Members of the units shall continue to work the duty chart currently in effect and as issued by the Chief of Police which shall consist of a 238 day (1904 hours) work year.

### **ARTICLE XIV - Supplemental Death Benefit**

A. The Town has adopted Section 360-b of the Retirement and Social Security law providing the supplemental death benefit for Employees who decease while active members of the Police



Department. The Town will make a \$10,000 contribution for an Employee who is killed in the line of duty to the Employee's spouse or his/her estate.

#### **ARTICLE XV - Severance and Death Benefits**

A. Unused compensatory time, overtime, holiday and vacation pay, sick time (pursuant to the provisions of Article XXI(B), except that the Employee need not have met the 125 day threshold) and terminal pay shall be paid over to the Employee, the Employee's spouse, or the Employee's estate within 30 days of the Employee's termination of employment because of retirement, resignation or death, except for dismissal for cause. For purposes of computing a day's pay, a 238 day (1904 hours) work year shall be used.

B. Accumulated personal time shall be payable at the time of termination of employment due to death or resignation. There shall be no payment at the time of retirement or dismissal for cause.

C. All benefits available pursuant to this Article may be payable in up to 5 installments over 5 years at the Employee's option.

D. 1. Accrued benefits for which payment may be made upon retirement pursuant to this Article shall not be made if the retiring unit member provides the Town with less than four months' notice of his or her intention to retire, unless it is determined upon application of the member to the Town Board that unusual and extenuating circumstances made the giving of a full four months' notice impossible, and provided that an application shall be deemed to be approved if it is not acted upon by the Town Board within 30 days of its submission.

2. If a failure to give at least four months' notice of intent to retire occurs under any of the following circumstances, unusual or extenuating circumstances shall be presumed to exist unless the Town Board is presented with competent evidence to the contrary:

- a. When a member has received an offer of employment which is conditioned on acceptance within four months of when the offer was made;
  - b. When a member or member's wife, husband, son, daughter, father or mother becomes injured, sick or disabled; and
  - c. When a member is compelled by law to render military service.
3. The above provisions are set forth for the purpose of defining those circumstances under which a presumption of unusual or extenuating circumstances exists and does not constitute an exclusive list of all facts and circumstances which may constitute unusual or extenuating circumstances within the meaning of this provision.
4. The decision of the Town Board that unusual or extenuating circumstances do not exist shall be grievable pursuant to Article XXXIV.

#### **ARTICLE XVI - One Year Final Average Benefits**

The Town participates in the 20 year, one-half pay final average annual salary, based on the one year option, non-contributory retirement plans pursuant to the New York State Retirement and Social Security Law. The Town has also adopted the New York State Police Retirement System, Section 384-e, the special 20 year plan with additional 1/60th.

#### **ARTICLE XVII - Non-Conflict Rule**

During the term of this Agreement, neither party shall make any rule or regulation in conflict herewith.

#### **ARTICLE XVIII - Working Conditions**

- A. Employees shall not be required to wear their hats while in a radio motor patrol car.

B. All other benefits currently being enjoyed by the Employees, whether by statute, law, ordinance, resolution or precedent, shall continue to be in effect, provided the benefit does not duplicate a similar benefit herein provided.

C. An Employee shall be compensated for the replacement cost of a personal item or items lost or damaged beyond repair or for the cost to repair a damaged personal item or items, provided the loss or damage is caused without the Employee's negligence and is incurred while the Employee is on duty or actually conducting police business, and further provided, that the item or items are of a nature the Employee would reasonably be expected to have in his/her possession in the course of duty. If an item is replaced depreciation will be deducted from the cost of the replacement.

The personal items covered by the provisions of this section shall be limited to clothing, equipment and accessories actually being worn at the time loss or damage is incurred, or a personal vehicle when parked at or in close proximity to a relieving point, when on duty, and the damage is caused by criminal mischief or vandalism. A motor vehicle shall not be deemed to be operated in the performance of police business when such vehicle is being driven by an Employee to and from the Employee's home on the Employee's daily work assignment.

The Employee seeking to collect hereunder must prove to the satisfaction of the Chief that the loss was actually incurred. When a claim is submitted, it must be accompanied by a sworn statement that the claim was incurred in the course of the Employee's duties as a police officer, together with an executed claim voucher indicating the items, damage or loss and their approximate original cost, together with the current value, including depreciation, if any. These provisions shall not be applicable for the annual equipment allowance that each Employee receives.

D. No Employee shall be compelled to submit to a polygraph test.

E. In the event that the designated department Executive Officer is a unit member, a Town-owned vehicle will be supplied, maintained and fueled by the Town Board and assigned to the Officer for his/her use.

F. All new patrol vehicles shall be equipped with air conditioning, power windows and power door locks.

#### **ARTICLE XIX - Re-Negotiation**

Upon the mutual agreement between the SOA and the Town, during the term of this Agreement, it may be reopened for further negotiations for additional benefits for either the Town or for the Employees.

#### **ARTICLE XX - Clothing and Equipment**

A. The Town will provide all Employees with all uniforms and equipment, which shall include, but not be limited to, a handgun.

B. An Employee shall receive an equipment allowance toward the cost of required equipment not furnished by the Police Department and the cleaning of uniforms in the sum of \$1,100 to be paid on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>. The allowance shall be prorated on a quarterly basis for those who do not work a full year in the position. As long as the Employee works in the position for at least one day in any 3 month period, he/she is entitled to a 1/4 share of the annual allowance.

C. Any Employee assigned to perform duty as a Detective or in plain clothes by order of the Chief for a continuous period of not less than three months shall receive an additional allowance in lieu of clothing on a basis of \$900 per calendar year. Such clothing allowance shall be paid by separate check, not inclusive in the Employee's salary, on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>.

**ARTICLE XXI - Sick Leave**

A. Employees shall accrue sick leave at a rate of one and one-fourth days per month to a total of 15 days per year. Effective June 27, 2002, in no event shall an Employee earn more sick leave as a unit member than he/she did as a member of another Town bargaining unit. Sick leave shall not be accrued by those employees on an unpaid leave of absence, or those employees under suspension for more than 30 consecutive calendar days during the pendency of disciplinary charges.

B. Employees shall be permitted to accrue a maximum of 355 days of unused sick leave and shall be entitled to receive payment for 228 days in full upon retirement based on a 238 day work year and any accumulated sick days exceeding 228 days to 355 days shall be paid at the rate of the average salary over the past three years based on a 238 day work year (1904 hours). In order to qualify for this payment, the Employee must have accrued at least 125 sick days at retirement. The Employee will be deemed to have satisfied this requirement if, at any time during his/her employment, he or she buys out sick leave pursuant to paragraph (C) below.

Effective December 16, 2008, and only for those employees opting to buy back time pursuant to the provisions of Article XLI (Lag Payroll), the 125 day sick leave accrual requirement shall be reduced by the number of days bought back and those bought back days may be reaccumulated for sick time but not payout purposes.

C. An Employee may elect to reduce the sick time accrued under paragraph (B) by filing a written election with the Town Clerk before September 1<sup>st</sup>, in the form provided by the Town, for payment to be made in the last week in January of the following year. Buy-out shall be in lots of 10 sick days. The Employee will be deemed to have satisfied this requirement if, any time during his/her employment, he/she previously bought out sick time. The rate of pay shall be calculated at the time of payment; based on a 238 day work year (1904 hours). An Employee having made this election has agreed

that the maximum sick leave payable to said employee during his/her employment shall be 228 days at full pay based on a 238 day work year (1904 hours). Any payments made prior to retirement shall be deducted from the gross number of days that may be paid to an Employee at retirement. An employee who has bought back days may still be paid for unused accumulated sick leave days as follows upon the Employee's retirement: (a) the total number of days bought back shall, for calculation purposes only, be added back into the employee's unused accrued sick leave at the time of retirement; (b) of the 1<sup>st</sup> 228 total days, to be determined using FIFO (first in, first out) method, those not previously bought back will be paid at full pay based on a 238 day work year (1904 hours) as set forth in Article XXI(B); and (c) of any remaining days exceeding 228 up to but not exceeding 355, those not previously bought back will be paid at the rate of the average salary over the past three years based on a 238 day work year (1904 hours) as set forth in Article XXI(B). The Employee may reaccumulate bought back days for sick leave usage purposes only, provided the Employee does not exceed 355 total sick leave days at any one time."

D. The Town shall be permitted to require a medical certificate at the Town's expense for sick leave absences of less than three days duration and at the Employee's expense for absences of three days duration or longer.

E. Employees absent on sick leave shall notify the ranking officer in charge of the tour prior to two hours before the scheduled tour of duty. The Chief may grant advanced sick leave not to exceed 30 days to an Employee's account. Notwithstanding the foregoing, the Town, in its sole discretion, may provide additional sick leave over and above the maximum accumulation of 355 working days. Sick leave shall only be considered absence necessitated by actual illness or physical disability.

F. Sick Leave Bonus Plan A \$125.00 dollar bonus shall be paid to each Employee for each calendar quarter when the average pro rata sick time for all Employees equals one day or less per

Employee for such quarter. The average shall be based on the sick leave roster which shall be posted at Police Headquarters.

If the criteria in the above paragraph are not met, a \$100.00 dollar bonus shall be paid to each Employee for each calendar quarter the Employee has taken one sick day or less.

G. The Employee may be permitted to use up to five earned sick days due to the serious illness of a spouse where the Employee has exhausted all available personal days.

H. In order to be eligible to receive sick leave on any given day, the employee must, immediately after contacting the Department pursuant to the Department's standard procedure for requesting sick leave, also call the FMLA/Sick Line at 727-3200, x777 and advise that the employee is going to be absent from work that day, as well as whether the employee is requesting FMLA coverage for the absence because of a serious medical condition.

#### **ARTICLE XXII - Annual Physical Examination**

All Employees must submit to an annual physical examination by a doctor designated by the Town. Both the Employee and the Town will receive a written report of this examination. Payment for the examination is the responsibility of the Town.

#### **ARTICLE XXIII - Outside Employment**

An Employee may engage in security work for an outside entity with the prior notification to the Chief and with a limit of 20 hours or less per calendar week under the following circumstances: (1) the work and/or entity and /or entity's corporate headquarters is located outside the Town; (2) the nature of the employer's business is compatible with and appropriate to the employee's regular police duties (e.g., not an establishment licensed to serve alcohol); and (3) the employee completes and submits to the Chief an affidavit prepared by the Town certifying the prospective employer's name, address and telephone number, the type and nature of the work involved, and that the employee understands and will abide by

the provisions of this paragraph. The Chief shall retain the discretion to decide, on a case by case basis, that a particular officer performing this work outside of the Town may carry or use a firearm as part of otherwise approved security work. The Chief's decision shall not be arbitrary or capricious.

#### **ARTICLE XXIV - No Strike Pledge**

The SOA for itself and on behalf of its members agrees that there shall be no strike, job action, slowdown, or other interruption of work during the period of the Agreement or at any other time.

#### **ARTICLE XXV - Bill of Rights**

A. The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts come many questions concerning the actions of members of the force. These questions often require immediate investigation by Superior Officers. In an effort to ensure that these investigations are conducted in a manner which is conducive to good order and discipline, the following guidelines are promulgated:

1. The interrogation of an Employee shall be at a reasonable hour, preferably when the Employee is on duty, unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations should be scheduled for the daytime.
2. The interrogations shall take place at a location designated by the investigating officer. Usually, it will be at the Police Headquarters or at the place at which the incident allegedly occurred. The Employee may be represented by counsel at all times if he/she makes such a request.
3. The Employee shall be informed of the nature of the investigation before any interrogation commences, including the name of the complainant, although the address of any complainant and/or witness need not be disclosed. If it is known that the Employee being interrogated is a witness only, the Employee should be so informed at the initial contact.



4. The questioning shall not be unduly long. Reasonable respites shall be allowed. Times shall also be provided for personal necessities, meals, telephone calls and rest periods as are reasonable necessary.

5. The Employee shall not be threatened with dismissal or other disciplinary punishment. No promises of reward shall be made as an inducement to answering questions.

6. The complete interrogation of the Employee shall be recorded mechanically or by a stenographer if requested by the Employee. When the proceedings are recorded, (all recesses called during the questioning shall be recorded) the Employee shall be entitled to examine, and make a copy (at the Employee's expense) of the transcript of such stenographic record within a reasonable time after the interrogation, if request therefore be made in writing to the Town.

7. If an Employee is under arrest or is likely to be, that is, if he/she is a suspect or the target of a criminal investigation, he/she shall be apprised of his/her constitutional rights, which are that the Employee must, prior to the interrogation, be informed that he/she has the right to remain silent, and that anything he/she says can and will be used against him/her in court; that he/she must be informed that he/she has the right to consult with counsel and to have counsel with him/her during interrogation.

8. In all other cases, there is no obligation, legal or otherwise, on the Department to provide an opportunity for an Employee to consult with counsel or anyone else when questioned by a superior officer about his/her employment or matters relevant to his/her continuing fitness for police service. Nevertheless, in the interest of maintaining the usually high morale of the force, the Town may (but need not) afford an opportunity for an Employee, if he/she so requests, to consult with counsel before being questioned concerning a serious violation of the Rules and Regulations of the Town of Riverhead Police Department, provided the interrogation is not unduly delayed. In no event shall the interrogation be postponed for the purpose of consulting with counsel past 10:00 a.m. of the day following the

notification of interrogation. Counsel, if available, may be present during the interrogation of an Employee. Requests to consult with counsel in connection with minor violations will be denied unless sufficient reasons are advanced to support such requests. Unless otherwise expressly provided herein, all counsel fees and other expenses incurred by an Employee shall be paid by the Employee and may not be recovered from the Town.

#### **ARTICLE XXVI - Legislative Action Requirement**

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN ITS APPROVAL.

#### **ARTICLE XXVII - Binding Effect**

This Agreement shall be effective for the period from January 1, 2008 through December 31, 2011.

#### **ARTICLE XXVIII - Partial Invalidity**

If any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions of same shall, nevertheless, continue in full force and effect.

#### **ARTICLE XXIX – Vests**

Each Employee shall be provided a bulletproof vest for use on duty. Any Employee who does not wish to wear the vest while on duty shall supply a sworn, written release executed by the Employee and his or her spouse releasing the Town from any and all liability that may result from the Employee's failure to wear the vest. However, the release shall not eliminate any and all coverage for injury or death as may be provided by this contract or laws and statute.

### **ARTICLE XXX - Deferred Compensation Plan**

As per Town Board Resolution #193 as approved March 5, 1985, and to the extent permitted by the U.S. Internal Revenue Code and the New York State Income Tax Laws, Employees may elect to participate in the Town of Riverhead Deferred Compensation Plan.

### **ARTICLE XXXI - Educational Incentive**

An Employee who earns his/her bachelor's degree while a member of the SOA unit will receive a yearly stipend of two percent of base pay. An Employee who earns a post graduate degree while a member of the SOA unit will receive a yearly stipend of one percent of base pay. No stipend will be granted for degrees earned prior to employment with the Town. All degrees, in order to be recognized, must be in the field of Police Science or Law and must be received from an accredited university or college. Payment of the education stipend will be made along with the December payment of Holiday Pay.

### **ARTICLE XXXII - Salaries**

The salaries for the following Employees for the period January 1, 2008 through December 31, 2011 shall be as follows:

#### **SALARY SCHEDULE**

	<b><u>JAN. 1, 2008</u></b>	<b><u>JAN. 1, 2009</u></b>	<b><u>JAN. 1, 2010</u></b>	<b><u>JAN. 1, 2011</u></b>
Sergeant	\$111,538	\$116,000	\$120,640	\$125,465
Det. Sergeant	\$114,350	\$118,924	\$123,681	\$128,628
Lieutenant	\$119,908	\$124,704	\$129,692	\$134,880

### **ARTICLE XXXIII - Drugs and Alcohol**

A. The use of illegal controlled substances or alcohol by employees adversely affects the Town's ability to safely deliver services, impairs the efficiency of the work force, endangers the safety of

Employees and the public, and undermines public trust. Therefore, the use, sale, distribution, or possession of illegal controlled substances or alcohol by any Employee while on duty is prohibited. In addition, Employees are prohibited from being under the influence of illegal controlled substances or alcohol while on duty. Employees in violation of this policy are subject to disciplinary action, up to and including discharge.

B. Unless otherwise noted, all discipline under this policy shall be in accordance with applicable provisions of law.

C. Any Employee who refuses to submit to testing or who refuses to cooperate with the testing procedures may be subject to discipline, including discharge. Attempts to alter or substitute the testing specimen will be deemed a refusal to take the test.

D. The procedures and provision of Article XXV (Bill of Rights) are specifically applicable to this Policy and Procedure.

E. TESTING

1. Employees shall be subject to urinalysis testing based upon a reasonable suspicion of illegal controlled substance or alcohol use.

a. The order to submit to testing must be justified by a reasonable suspicion that the Employee is or may be under the influence of illegal controlled substances or alcohol while on duty, or is engaging in the use, sale, distribution, or possession of illegal controlled substances or alcohol while on duty.

b. While the “reasonable suspicion” standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches or intuitive feelings do not meet the standard.

c. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.

d. Reasonable suspicion may be based, among other things, on the following:

- i. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of drugs or alcohol; or
- ii. A pattern of unusual or abnormal conduct or erratic behavior (e.g. excessive absenteeism, lateness or early leaves); or
- iii. Arrest or conviction for a drug-related offense, or the identification of an Employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; or
- iv. Information provided by a reliable and credible source; or
- v. Newly discovered evidence that the Employee has tampered with a previous drug or alcohol test.

e. It is intended that where a decision is made to test, the Employee will be given a direct order to submit to the test and the SOA shall be notified of such order. The test shall be conducted immediately thereafter. The Employee shall be given a brief verbal statement of the basis for reasonable suspicion.

f. Where reasonable suspicion is based on information provided by a confidential informant, defined as an employee or agent of a governmental law enforcement agency or the employee's department, the identity of the source need not be disclosed, except for the name of the governmental law enforcement agency involved, if any. The Town shall not be required to identify a

confidential informant in any proceeding, nor can evidence supplied by a confidential informant be suppressed because of a refusal to identify the name of the source.

g. The parties agree to continue their negotiations over the procedures that will be utilized to implement their agreement to adopt a random drug testing policy. In the event that the parties are unable to reach an agreement on those procedures within 30 calendar days following the complete ratification and approval of this Agreement, they will proceed immediately to binding arbitration over the issue before a mutually agreed upon arbitrator or, if they cannot agree upon an arbitrator, one selected pursuant to PERB's interest arbitration rules and procedures. The parties agree that the Town's submission to arbitration shall not include a request for random alcohol testing.

#### F. TEST PROCEDURES

1. Insofar as practical, the sample collection process shall be confidential with due regard for the dignity and privacy of the Employee. There shall be no direct observation of giving of urine specimens, unless there is reason to believe that the specimen may be tampered with, in which event direct observations shall be made by a person of the same gender as the Employee giving the specimen.

2. Specimens shall be collected under the supervision of a monitor designated by the Town. The monitor shall mark and seal the specimen to preserve its chain of custody; thereafter, the specimen shall be transported to the testing laboratory in a manner which shall insure its integrity and chain of custody. The laboratory selected to perform testing shall be certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services.

3. Initial urinalysis testing shall be conducted by means of an enzyme multiplied immunoassay test (EMIT). All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry test (GC/MS). The laboratory shall report as negative all specimens which are negative on either the initial test or the confirmatory test. Only specimens which test

positive on both the initial test and the confirmatory test shall be reported as positive. Copies of results shall be sent to the Town and the Employee. All tests conducted pursuant to this procedure will be paid for by the Town.

4. In the event the test procedures reveal the presence of illegal controlled substances or their metabolites or alcohol, the Employee may be subjected to discipline, including discharge. However, in the first instance of such positive drug or alcohol test, any disciplinary charges may be suspended in the Town's sole discretion if the Employee agrees in writing to complete counseling and treatment on his/her own time for the illegal controlled substance use or alcohol use in a program jointly agreed to by the Town and the SOA. The Employee shall agree, as a condition to the suspension of the disciplinary charges, that if he or she fails to attend or complete the program, he or she shall be deemed to have resigned from employment. The Employee shall also agree, as a condition to the suspension of the disciplinary charges or penalty, that for a period of one year following the completion of treatment, he or she shall be subject to periodic random testing for illegal controlled substances and/or alcohol, and that, if he or she completes counseling and treatment but tests positive for illegal controlled substances or alcohol during such one year period, the Town may reinstitute the suspended charges, in addition to preferring new charges. Upon completion of treatment, as outlined above, and the one year period, the original disciplinary charges or penalty shall be considered resolved. The record of the charges and their resolution (the charges, the answer and the stipulation) shall remain in the Employee's file unless the parties otherwise agree. The parties agree to continue their negotiations over the procedures that will be utilized to implement their agreement to adopt a random drug testing policy. In the event that the parties are unable to reach an agreement on those procedures within 30 calendar days following June 27, 2002, they will proceed immediately to binding arbitration over the issue before a mutually agreed upon

arbitrator or, if they cannot agree upon an arbitrator, one selected pursuant to PERB's interest arbitration rules and procedures.

#### **ARTICLE XXXIV - Random Drug and Alcohol Testing**

A. Policy: It is the policy of the Town to detect and deter the abuse of alcohol, the use and possession of illegal drugs and the abuse of prescription drugs in the work place. The parties recognize that the use and possession of such substances constitutes a serious threat to the health and safety of all employees and members of the public. Accordingly, the purpose of this Article is to formalize a Town policy that prohibits the use, possession, sale, delivery or being under the influence of illegal substances and/or drugs and/or alcohol while on duty. Any disputes regarding the interpretation of this Article, as distinguished from whether the Article has been correctly applied to a particular member(s), shall be heard by Arbitrator Marlene Gold.

#### B. Definitions

1. The term "Drug" shall include controlled substances as defined in Section 220.00(5) of the Penal Law, State of New York, steroids and marijuana, as defined in Section 220.00(6).

2. The term "Drug Abuse" shall include the use of a controlled substance or marijuana, which has not been legally prescribed and/or dispensed, and the improper or excessive use of a legally prescribed drug as determined by the Medical Review Officer designated by the Town.

3. The term "Alcohol Abuse" shall be a test result of 0.04 or greater.

4. Random Employee Selection Sheet: A computer-generated list of randomly selected Town members identified by employee I.D. numbers.

5. Computer Control Sheet: A computer generated list of all SOA unit members contained within the random drug/alcohol test data base.



C. Procedure

1. Unit members shall be subject to random drug and alcohol testing. A member may not be required to submit to testing more than one time every two months. The member(s) picked will report for testing upon notification if on duty, or on their next working shift.

2. Whenever members obtain information or suspect that another member may be abusing drugs or alcohol, they shall immediately notify the Chief.

3. Refusal to submit. The refusal by a member to submit to a drug or alcohol test or the adulteration of such test by the member pursuant to the provisions of this order may result in immediate suspension and subsequent disciplinary action which may include dismissal from the Town.

4. Testing Procedures. The following procedures shall apply to all random drug and alcohol tests unless otherwise superseded by this Agreement.

a. Every reasonable effort will be made to maintain employee confidentiality. In order to insure confidentiality and the integrity of the tests, samples will only be taken at the test location by the authorized medical staff. Sample taking will not be conducted, or otherwise interfered with by the Town or any representative of the member. Samples will never be handled or tampered with by the Town or any representative of the member. Samples will not be released to anyone, except as authorized in this policy or as required by law, without the individual written consent of the member.

b. Each member being tested shall present his or her shield and identification card at the test location to ensure proper identification.

c. Each member being tested may consult with and be accompanied by a SOA representative, who may confer with and advise the member before and after the collection process, but shall not participate in or interfere with the process in any way. The representative shall be given

reasonable advance notice of when such testing will occur so that he or she may attend. However, the collection process shall not be delayed because the representative is unavailable.

d. Selection of members to be selected on a random basis shall be performed by a computer program which will randomly select the employee number of those to be tested. The random selection of a member will not result in that member's employee number being removed from such selection process.

e. The selection will be made by a laboratory licensed or certified by SAMHSA, HHS. The President of the SOA shall be provided with a copy of all Random Selection Sheets sent to the Town by the laboratory that are used to select members for testing.

f. The selection process shall not be delayed due to the unavailability of the SOA representative.

g. A member selected will be notified and ordered to report for testing. Members will not be given any advance notice of randomly scheduled tests. The SOA President will be permitted to review the list of members selected for testing and the computer control sheet after all selected members have been tested.

h. Members will not be recalled to duty for random testing on their regularly scheduled days off or if the member is on authorized leave.

i. All random employee selection sheets and corresponding computer control sheets will be maintained in the office of the Chief.

j. A member will be exempt from a drug test if at the time of selection for that particular test he or she is unavailable due to (i) vacation, (ii) injury, (iii) sickness, (iv) military leave, (v) bereavement leave, (vi) personal leave, (vii) jury duty or (viii) the member having notified the

Department that he/she has requested admission, but has not yet been admitted to, the Employee Assistance Program.

k. All testing pursuant to this Agreement including, but not limited to, screening or initial testing and confirmatory testing shall be performed in compliance with the collection, testing and other requirements promulgated by the U.S. Department of Transportation, Federal Highway Administration.

l. The laboratory administering the test shall assure that the appropriate chain of custody is established in order to verify the identity of each sample being tested.

5. Random Drug Testing Procedures

a. There shall be no direct observation of the giving of the urine sample unless there is reason to believe that the sample may be tampered with, in which event direct observation by an authorized individual of the medical staff is permitted. This individual shall be a person of the same gender as the member providing the sample.

b. Testing shall be performed by a laboratory licensed or certified by SAMHSA, HHS. Two separate containers supplied by the testing lab shall be prepared by each member being tested. Each container shall have a code number and date of collection affixed. The specimen shall be divided into two samples at the time of collection and shall be sealed and initialed in the presence of the member.

c. Prior to testing, each member shall list all medications ingested during the preceding 10 days. The member may also list any supplements, vitamins, herbs, foods or other products ingested during that same period. The list shall be sealed in an envelope and the employee's name and date will be written on the outside. If the test results are negative, the envelope will remain sealed and be destroyed in the presence of the SOA President or designee.

d. Initial drug screening will be by the Enzyme Multiple Immunoassay Testing (EMIT). No sample will be further tested upon a negative screening for controlled substances or marijuana. After a negative screening, the sample will be destroyed.

e. Each and every positive EMIT test will be confirmed using Gas Chromatography Mass Spectrometry test (GCMS). Only if confirmed by GCMS will a test result in a positive report. In order to be defined as a "positive" result, the initial and/or confirmatory test levels must be at or above those set forth in the applicable federal D.O.T. guidelines.

6. Random Alcohol Testing Procedures

a. The equipment to be utilized must, at all relevant times, be an approved Evidentiary Breath Testing device (EBT) listed on the National Highway Safety Administration's "Conforming Products List of Evidential Breath Measurement Devices."

b. Any alcohol testing equipment utilized pursuant to paragraph one (a) above shall, at all times, be accuracy tested, cleaned and in all respects tested and maintained in accordance with the quality assurance plan promulgated by the manufacturer of the equipment. Any alcohol testing equipment utilized shall immediately be accuracy tested following any positive test result.

c. Any alcohol testing under this Agreement will only be administered by technicians with valid training certifications from the manufacturer or a certified Breath Alcohol Technician (BAT) trainer which shall be in accordance with Department of Transportation (DOT) Regulations.

d. No SOA unit member will be ordered to administer, observe or otherwise assist in any way in alcohol testing pursuant to this Agreement.

e. The parties agree that random alcohol testing shall only be performed simultaneously with, and upon the same individuals selected for, random drug testing pursuant to the

Collective Bargaining Agreement. Nothing contained herein in any way modifies the Town's right to undertake appropriate disciplinary action and/or to seek termination for a first or subsequent offense with regard to such a positive test result.

f. Initial alcohol screening shall be conducted by a breath alcohol technician using an individually-sealed mouthpiece opened and attached to the Evidentiary Breath Testing device ("EBT"). The member will be asked to blow forcefully into the mouthpiece for at least six seconds, or until the EBT indicates that an adequate amount of breath has been obtained. If the member states that he/she does not have sufficient air capacity, he/she shall be sent immediately for a medical evaluation for verification of the claim. Absence of verification shall be considered a refusal. If the result of the screening is an alcohol concentration of greater than 0.04, a confirmation test will be performed between 15 and 20 minutes after the completion of the screening test. Prior to the confirmation test, the EBT will be cleaned and a new mouthpiece will be used. If the first test result is negative, no further testing will be performed. If the confirmation test is negative, the entire test will be deemed negative, and a negative test result will be reported. Samples will be destroyed.

7. Results of Tests

a. Members who are tested will be notified of the results of all drug/alcohol tests and provided a copy of the corresponding test results, as they become available, at no cost to the member as they become available. If the member has a drug and alcohol test and intends on introducing the results of such test at his/her disciplinary hearing, the Town will be provided with a copy of the results of the test at no cost and at least 30 days prior to the hearing.

b. Any member whose test results in a positive report may, within five business days of receiving notification of such result, request in writing to the Chief that the second sample be made available for retesting at the licensed/certified laboratory from a list of such laboratories

supplied by the Town. The Town will be responsible for all costs and expenses in connection with the retesting. If the retesting results in a negative report, the test will be deemed negative and all samples will be destroyed.

8. Confidentiality: The test results and/or other records released are to be used solely by the Town to carry out its obligations under the drug and alcohol testing policy, administering the contractual procedures, taking appropriate disciplinary action, or where the release is authorized or required by law. For the purpose of administering the policy, they may only be assessed by a Town employee if designated for that purpose, the Chief, and the attorney for the Town, and/or their designated medical experts, or others authorized by the attorney for the Town for the purpose of presenting evidence in disciplinary matters. If release of these records to others is authorized or required by law, the Town shall, as soon as practicable but not later than the three business days before the date of actual release, except where otherwise not possible, provide notification to the member or, if not available, to the SOA president (or designee) listing the records (to be) released and to whom the records were (to be) released.

9. Positive Test Results

a. Generally

i. All positive test results will be reviewed and verified by a qualified Medical Review Officer (MRO) or Substance Abuse professional (SAP) ("MRO"), whichever is applicable, designated by the Town, but who shall not be a Town employee. The Medical Review Officer shall examine alternate medical explanations for a positive test result. Pursuant to this responsibility, he/she may conduct a medical interview with the member, who may be accompanied to the interview by an attorney and/or SOA representative, review the member's medical history or review any other relevant biomedical factors. If the MRO objects, the attorney may not sit in during the interview. In such a case, the member may stop the interview at any time for the purpose of consulting the attorney provided that no

unreasonable delay results in conducting or continuing the interview. If the member provides appropriate documentation and/or the MRO determines that there is a legitimate medical use of the prohibited drug or alcohol, or an alternate medical explanation exists, then the test results are reported as negative. A negative test result is not reviewable by the Town.

ii. The employee may challenge the basis for, and validity of the testing as part of the applicable due process hearing procedures, if any, rather than through the grievance and arbitration procedure.

b. Positive Alcohol Test

i. Employees, who test positive for the use of alcohol, after being interviewed by the BAT, shall be relieved of duty.

a. If the BAC test result is less than .08, but .04 or greater, then the non-probationary employee shall be suspended without pay for five working days.

b. If the employee has a BAC of .08 or greater, or has a second positive alcohol test (including a second BAC test result of .08 or greater), then the employee shall be suspended without pay for 30 calendar days and directly referred to and immediately enrolled in an Employee Assistance Program. The employee shall fully and satisfactorily participate in any drug and/or alcohol abuse treatment plan specified by the EAP and shall not return to work or be restored to the payroll until he/she has fully and satisfactorily completed the course of treatment. The employee may utilize his/her accruals during any period of time suspended without pay and/or while enrolled in the EAP. In addition, the employee shall fully execute a consent form to be provided by the Town as a condition of the Town's willingness not to proceed immediately to a disciplinary hearing against the employee. If the employee ever revokes his/her consent, or refuses to fully execute subsequent consent forms deemed necessary by the Town in order for it to satisfactorily confirm the employee's full and satisfactory

compliance with this Agreement, then the Town shall have the right, upon prior written notice to the employee, to immediately proceed to terminate the employee's employment, subject to any applicable due process disciplinary hearing procedures. In this event, the employee hereby waives any and all rights he/she might otherwise have pursuant to any applicable law, rule, regulation or contract provision to assert the applicable statute(s) of limitation, to which the employee might otherwise be entitled relating to the termination of his/her employment.

c. If the employee has a third positive alcohol test, or is a probationary employee, the employee shall be dismissed from employment, subject to any applicable due process disciplinary hearing procedures.

ii. The employee may be restored to the payroll for any period of time not covered by a suspension without pay and during which he/she has not been approved by the SAP to return to work, unless the delay is the fault of the employee.

iii. Any test result with a blood alcohol concentration below .04 shall constitute and be reported as a negative test. Said result will not be reflected, in any respect, in any Personnel or other Departmental file.

iv. The penalties set forth in this Agreement pertain only to positive alcohol tests and are separate and distinct from penalties which may be imposed as a result of a positive drug test or other bases for discipline.

v. Any employee who tests positive for alcohol shall be required to submit to and pass a return to work alcohol test before returning to duty. This test shall be administered as soon as practical upon the employee's return to work and shall be performed in conformity with the guidelines established in this Agreement. If the employee test positive on a return to work alcohol test, the positive result shall constitute an additional offense under this Agreement.



c. Positive Drug Test

i. Members who test positive for the use of drugs, after being interviewed by the MRO shall be relieved of duty. The Town retains the right to discipline a member who tests positive for drug use up to and including dismissal. In the sole discretion of the Town, members who test positive for the use of drugs who do not have a history of drug abuse may be referred to the EAP.

ii. Discipline For Positive Test Results: Subject to the restrictions of this policy, the Town has the right to discipline members who test positive for drug use.

10. Voluntary Treatment: Members may voluntarily seek treatment at any time before he/she reports to the laboratory for testing. Members who voluntarily seek treatment for substance abuse under the auspices of the EAP shall immediately notify the EAP of their desire to participate in the program. The member and the representative of the EAP shall meet as soon as possible for purposes of discussion on entrance into the program. Any member who has voluntarily sought treatment shall not be subject to any disciplinary action for that reason.

D. EMPLOYEE ASSISTANCE PLAN

1. Policy Statement: The Employee Assistance Program is provided within the following framework:

a. All records pertaining to the Employee Assistance Program will be kept confidential. No information obtained from or about a member as a result of his or her participation in the Program shall be made available to be used for any purpose unless a "Consent to Release Information" form has been signed by the member and acknowledged. The member must execute all such forms provided by the Town.

- b. The Town assures that the decision to seek or not seek assistance through the Employee Assistance program will in no way be detrimental to a member's job security or advancement opportunities.
- c. The Town's sole interest in personal concerns is strictly limited to the effect of the problems on a member's work performance standards.
- d. It is the responsibility of the member to meet acceptable work performance standards.
- e. It is the responsibility of the member's supervisors to implement this Policy by advising the member of situations in which they have reason to believe that a referral to an EAP may be appropriate to address issues of concern to the Town. This Program will not be used for disciplinary action of any kind against the member.
- f. Sick leave or salary continuance will be provided in accordance with the existing collective bargaining agreement between the Town and the SOA.

### **ARTICLE XXXV - Grievance Procedure**

#### **A. General Principles**

- 1. Time limits set forth herein may be extended or diminished only by mutual, written agreement of all parties concerned.
- 2. Failure at any level of the grievance procedure to communicate a decision to the aggrieved party or his/her representative within the specified time limit shall permit the lodging of an appeal at the next level of the procedure within the time that would have been allotted had the decision been communicated by the final day.
- 3. If a grievance is sustained, the remedy shall not exceed or cover more than 30 calendar days before the date on which the grievance was filed.

B. Grievance Procedure

1. A “grievance” shall be defined as any alleged violation of a specific provision of this Agreement, excluding all matters including disputes concerning line of duty injured status of Employees.
2. All Grievances must be filed as outlined below within thirty calendar days from the date on which the event or condition constituting the grievance occurred, or the date on which the grievant knew or reasonably should have known of the event or condition, whichever is later.
3. There shall be four procedural steps as follows:
  - a. First Step: The first procedural step shall consist of the Employee’s presentation of the grievance in writing to his/her immediate supervisor. A written decision or determination thereon shall be made by the immediate supervisor within ten calendar days from the time of submission. A copy of the decision shall be mailed to the aggrieved Employee, the SOA and the Chief.
  - b. Second Step:
    - i. If the Employee is not satisfied with the decision at Step 1, he/she may appeal the grievance to the Chief by written notice within ten calendar days from the date of the decision at Step 1.
    - ii. Within ten calendar days after receipt of the appeal, the Chief shall render a decision. A copy of the decision shall be mailed to the aggrieved Employee and the SOA
  - c. Third Step:
    - i. If the Employee or the SOA is not satisfied with the decision at Step 2, either or both may submit the grievance in writing to the Town Board within ten calendar days of the date of the decision at Step 2.

ii. Within fifteen calendar days after receipt of the appeal, or at its next regularly scheduled meeting, whichever is later, the Town Board shall consider the grievance in Executive Session. The Board may hold a hearing if it believes it is necessary.

iii. Within seven calendar days after it has completed its consideration of the grievance, the Town Board shall render a written decision on the grievance. A copy of the decision shall be mailed to the aggrieved Employee, the SOA and the Chief.

d. Fourth Step:

1. Only the SOA or the Town can submit an alleged grievance to binding arbitration.

2. The filing for arbitration must be done by means of a written notice to the Town of intention to proceed to arbitration within 15 full working days from the date that the decision of the Town Board is received by the SOA

3. In the event that the parties are unable to agree upon the designation of an Arbitrator, within fifteen calendar days after the notice of intention to proceed to arbitration is received by the Town, an Arbitrator shall be appointed from a list(s) provided by the American Arbitration Association pursuant to its Voluntary Labor Arbitration Rules. Effective for all demands for arbitration filed on or after December 16, 2008, the Arbitrator shall be selected in rotating alphabetical order from the following panel: Howard Edelman, Arthur Riegel, David Stein and Jack Tillem. Any arbitrator(s) may be removed from the panel by a party upon written notice to the other to be received by that party by not later than December 1 each calendar year. Should this occur, the parties shall immediately meet to attempt to agree upon a replacement(s). Failure to agree upon a replacement(s) shall not be subject to the grievance or arbitration procedure, PERB or court jurisdiction, or other third party review, except that, if the panel contains fewer than four names for one or more months, then a party shall

have the unilateral option, on written notice to the other, to replace the panel for grievances not then pending with arbitration through the AAA as specified in the 2005-2007 Agreement.

4. The Arbitrator shall be limited to the terms and conditions set forth in this Agreement, and shall have no power to add to, delete from or otherwise modify any of its terms.

5. The fees and expenses of the American Arbitration Association and the Arbitrator shall be borne equally by the Town and the SOA. Effective for all demands for arbitration filed on or after December 16, 2008, the fees and expenses of the Arbitrator shall be borne equally by the Town and the SOA.

6. The election to proceed under this Agreement's Grievance Procedure to Arbitration shall act as a waiver of that party's right to seek a remedy in any other forum.

7. When the Town has preferred disciplinary charges against any Employee, Town Law § 155 shall apply, except that the Employee shall have the right to elect to have the charges determined pursuant either to arbitration (in which case the grievance shall be filed at Step 4 by the Employee rather than the SOA, and the 15 working days referenced in Paragraph 2 shall commence upon the employee's receipt of the disciplinary charges) or a hearing conducted pursuant to Town Law § 155, but not both.

#### **ARTICLE XXXVI - Probationary Period**

Employees promoted to sergeant shall serve a nine month probationary period. Effective December 16, 2008, Employees promoted to sergeant shall serve a 12 month probationary period, and Employees promoted to lieutenant shall serve a 12 month probationary period.

### **ARTICLE XXXVII - Jury Duty**

The first three days in the year shall be with full pay. Effective December 16, 2008, the first six months in the year shall be with full pay. All time taken thereafter shall be charged against accrued leave time.

### **ARTICLE XXXVIII -GML 207-C**

A. Accrued leave time shall be used during the first five days of any absence, unless the Town decides not to controvert the employee's claim. If GML 207-c status is awarded to the employee, or if Workers' Compensation awards the Town reimbursement for any or all of these five days, then the day(s) shall be reccredited to the employee and the Town shall provide written confirmation to the employee of the reccrediting within 30 calendar days of notice to the Town of the award of GML 207-c benefits or Worker's Compensation for the period in issue, unless an appeal is taken from the Workers' Compensation decision.

B. **General Municipal Law Section 207-c Procedure**

1. **Purpose:** This procedure is intended to regulate the application for, and the award and/or termination of, benefits under Section 207-c of the General Municipal Law ("GML 207-c"). It shall operate as a waiver of any other procedural rights the SOA and/or its Members may have pursuant to GML 207-c, including the right to utilize any other forum to seek redress regarding the subject matter set forth herein. Any future changes enacted by the State in the provisions of GML 207-c that conflict with an explicit provision of this procedure shall supersede the preexisting provision.

2. **Application for Benefits**

a. A member shall continue to be required, as per existing Department rules, procedures, orders, etc. ("rules"), to timely notify the Department of any injury, illness or sickness ("injury") allegedly occurring in or as the result of the performance of the member's duties and which

necessitates medical or other lawful remedial treatment (“GML 207-c disability”). The notification (“application”) shall be made on the attached form. The Member shall, along with the application for GML 207-c benefits, complete, sign and submit to the Town any medical release forms requested by the Town.

b. An application shall be deemed “untimely” unless it is filed on a timely basis in accordance with the rules and this procedure.

c. Members shall, within two weeks of the occurrence, report to the Chief or designee any sickness or injury to themselves no matter how slight. A member’s failure to comply with these reporting obligations shall result in the denial of an application for benefits under this procedure unless these requirements cannot be met due to (i) the Member’s physical or mental incapacity; (ii) an unforeseeable emergency; or (iii) any other situation which the Chief, in his sole discretion, finds acceptable.

3. Initial Application for GML 207-c Benefits

a. The Chief or designee (“the Chief”) shall have exclusive authority to initially determine the applicant’s eligibility for benefits under GML 207-c. The Chief shall have the authority to conduct a full investigation of the facts concerning the application.

b. After the filing of the application, the Member shall submit to one or more medical examinations as provided by law. This shall include, but not be limited to, promptly forwarding to the Town Attorney’s Office and Accounting Office and designated physician all reports, data, records and other information related to the Member’s injury. The Member and health provider shall cooperate fully with the designated physician. Failure to cooperate may result in information being excluded as specified in paragraph 4 of this Section.

c. Any reports submitted by the employee's or Department's health provider shall include the following information: (a) the exact date(s) that the health provider examined the member regarding the injury, (b) an explanation of what the examination consisted; (c) diagnosis, (d) causation, and the basis for that belief; (e) treatment modalities; (f) what duties, if any, the member cannot perform, and for how long; and (g) whether any or all of the duties the member cannot perform could be performed with an accommodations(s) and, if so, what the accommodation(s) is (are). The failure to provide information specified in this paragraph may result in the health provider's report being disregarded by the Town or by the Arbitrator.

d. The Town shall render a written decision on the application for benefits within 60 calendar days after receipt of the application specified above. A copy of the decision shall be mailed to the Member by regular and certified mail, return receipt requested, at the address specified in the application. A copy shall also be delivered to the Accounting and Town Attorney's Offices and a copy shall also be delivered to the SOA President. The failure to issue a decision in accordance with these time limits shall result in the member being placed on 207-c benefits.

e. While a decision on an application is pending, time off alleged to be attributable to the injury giving rise to the claim for GML 207-c benefits shall be charged based on the Department's initial determination.

f. If the decision is that the member is eligible for GML 207-c benefits, then the Member shall be so categorized and pursuant thereto any time off taken due to such injury or sickness shall be charged to GML 207-c leave, subject to the provision of Section V below. The Member's GML 207-c benefits shall continue so long as the member remains eligible.

g. In the event the member is not satisfied with the Town's decision and wishes to appeal it, the Member shall file with the Town within 30 days of receipt of the decision a



written demand for arbitration on the GML 207-c claim. The parties to the arbitration shall be the Town and the Member. There shall be a single arbitrator (“the arbitrator”), who shall be selected in accordance with the procedures set forth in Article XXV(B)(3)(d)(3). All costs billed by the arbitrator shall be borne equally by the Town and the Member. All other costs shall be paid by the party incurring them; e.g., witnesses, exhibits, transcripts, etc.

h. The Arbitrator shall have the authority to decide, whether the Town’s denial of the claim of entitlement to GML 207-c benefits was arbitrary and capricious. He or she shall have authority to consider and decide all allegations and defenses made with regard to the GML 207-c claim. In the event of a dispute between the parties as to the nature of the proceeding, the Arbitrator shall first decide whether the proceeding represents an issue of an applicant’s initial entitlement to GML 207-c benefits or whether the proceeding presents a different issue that should be decided in a different proceeding, as outlined below.

i. The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this procedure, the Collective Bargaining Agreement and the rules. The Arbitrator shall have no authority to make a decision on any issue not submitted or raised by the parties.

j. The decision and award of the Arbitrator shall be final and binding on the parties.

#### 4. Reports

a. An employee determined to be entitled to disability benefits will advise the Chief in writing of any change in his or her status (e.g., any improvement in physical or mental condition during the disability) but in no event less than once per month.

b. Such reports must be filed by the unit member with the Chief, or his designee, in person unless it is medically impracticable for the unit member to do so.

c. Such reports shall set forth: (a) the status of the injury; (b) the name of any doctor or other medical personnel who examined or treated the employee during the period being reported upon; (c) the treatment prescribed; (d) the estimated length or the recovery period; (e) whether the employee is capable of performing any work for the Department despite his/her injury.

5. Alleged Recurrence or Aggravation of Prior Injury

a. In the event that the member or the Department alleges that an injury is a recurrence or aggravation of a prior injury, the procedures set forth in Section 3 shall be implemented.

b. The Member shall submit to the Town Attorney's Office and Accounting Office any previously unsubmitted health provider(s) report(s) upon which the member intends to rely at the hearing immediately upon receiving same from the health provider. Likewise, the Town shall submit to the member any previously unsubmitted health provider(s) report(s) upon which the Town intends to rely at the hearing immediately upon receiving same from the health provider. If such a relationship is found between the alleged recurrence or aggravation and a prior injury, and the prior injury was designated by the Town as a GML 207-c injury, then the application shall be granted, provided the Arbitrator otherwise finds the member entitled to GML 207-c benefits as set forth in Section 2. If no such relationship is found, then the claim shall be treated as an initial injury and the matter shall be processed pursuant to Section 3 above.

6. Termination of Benefits/Return to Duty

a. The Town may review cases of Members receiving GML 207-c benefits for the purpose of determining whether the Member continues to be entitled to those benefits and in furtherance thereof may take such action as is appropriate under the law.

b. Any Member who is receiving benefits under GML 207-c continues to be subject to rules and regulations of the Department.

c. Upon receipt of a certification from the Town designated physician that a Member is able to perform some or all of the duties of his or her position, or upon receiving information wherein the Department asserts the Member is no longer eligible for GML 207-c benefits, the Town may notify the Member of same. The Town shall notify the member by serving a written notice of proposed termination, setting forth the effective date thereof and a copy of the physician's certification, upon the Member by regular mail and certified mail, return receipt requested and a copy shall also be delivered to the SOA President. The effective date may be no sooner than 48 hours after notification. A copy shall also be delivered to the Accounting Department and the Town Attorney.

d. The Member shall submit to the Town Attorney's Office and Accounting Office any previously unsubmitted health provider(s) report(s) upon which the Member intends to rely at the hearing immediately upon receiving same from the health provider. Likewise, the Town shall submit to the member any previously unsubmitted health provider(s) report(s) upon which the Town intends to rely at the hearing immediately upon receiving same from the health provider. If more than 60 calendar days elapse from the effective date of the Town's notification to the Member and the final resolution of the dispute, any time in excess of the 60 day period shall be charged against the Member's accrued leave time period; except that, if the employee in good faith indicates that he/she is ready, willing and able to go forward on a day or days agreed upon by the arbitrator and counsel for the employee and Town and, in fact, goes forward and presents his/her case within that 60 day period, or a scheduled arbitration hearing is adjourned at the request of the Town or the arbitrator, then the 60 day period shall be extended to 90 days. In the event that the Member's GML 207-c status is confirmed when the matter is finally resolved, any leave time used as a result of this provision shall be reccredited to the member. If the Member disagrees with the Town determination, he or she shall commence an appeal pursuant to the procedures outlined in Section 3 (g). While pending the Member shall remain a GML 207-c status.

7. Other Provisions

a. In the event that any portion of this procedure is invalidated by a decision of a tribunal of competent jurisdiction, then that portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. In this event, either the SOA or the Town shall have the right immediately to reopen negotiations with respect to a substitute for the invalidated portion.

b. A Member may have an attorney of his or her choice or a member of the Department as his or her representative at any stage of this procedure, provided there is no unreasonable delay.

c. Evidence pertaining to a Member's application for benefits pursuant to the Workers' Compensation Law, including whether or not the application was controverted, granted or denied, shall not be given any preclusive effect in any stage of this procedure, but shall be admissible as evidence to be given the weight deemed appropriate by the Arbitrator.

d. This procedure shall take effect upon the issuance of this Award and shall apply to all applications pursuant to Section 3 and/or Section 4 made after that date and all determinations pursuant to Section 5 rendered after that date.

**ARTICLE XXXIX – Leaves of Absence**

A new article shall be added confirming the entitlement of unit members to apply for an unpaid leave of absence of up to one year, and providing that an employee granted such a leave by the Town Board shall be notified by the Town prior to the end of the leave, by certified mail to the employee's last known address, of the date of expected return to work following the end of the leave; that if the employee fails to return to work within 10 days of the designated day, s/he shall be deemed to have abandoned his/her position with the Town; and that the employee will then be deemed to have waived any applicable due process protections otherwise available, including but not limited to those pursuant to Civil Service

Law Section 75 or the collective bargaining agreement, and may be terminated by the Town at its discretion, which the parties hereby agree shall be the case.

#### **ARTICLE XL – Retention of Service Weapon Upon Retirement**

Effective December 16, 2008, if the Police Commissioner/Sheriff issues a pistol permit, pursuant to Penal Law Section 400, to an employee whose last 10 consecutive years of service preceding retirement from the Town were with the Department in a full-time capacity, the employee may purchase his/her service weapon upon payment to the Town of its fair market trade-in value, as determined by the Department. The right to purchase the weapon is subject to the Police Chief's individualized discretion.

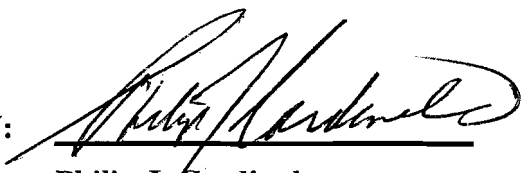
#### **ARTICLE XLI – Lag Payroll**

Effective December 7, 2008, a lag payroll will be implemented for all employees as follows:


- A. Employees whose pay checks are not subject to a two week payroll lag as of December 16, 2008 will receive their regular pay checks for the pay period of December 7, 2008 through December 20, 2008 on December 31, 2008, rather than on December 18, 2008 as scheduled.
- B. For all employees, pay checks will be issued on December 31, 2008, January 15, 2009 and every two weeks thereafter.
- C. Any retroactive base salary increases owed by the Town to employees as a result of the implementation of the provisions of the 2008-2011 Agreement shall be paid on December 18, 2008.
- D. By no later than December 1, 2008, an employee, including one whose retroactive pay check will be inadequate to cover the dollar value of the number of days to be lagged pursuant to this Agreement, may submit a written request to the Accounting Department to buy-back, in single day (eight hour) increments, up to 10 days of unused accrued leave time.

IN WITNESS WHEREOF, the TOWN OF RIVERHEAD has caused this Agreement to be signed by its Supervisor, by order of the Town Board of the Town of Riverhead, and the RIVERHEAD SUPERIOR OFFICERS ASSOCIATION, has caused this Agreement to be signed by its President, by order of its members.

**TOWN OF RIVERHEAD**

BY:   
Philip J. Cardinale  
TOWN SUPERVISOR

**RIVERHEAD TOWN POLICE SUPERIOR  
OFFICERS ASSOCIATION, INC.**

BY:   
Richard K. Boden  
SOA President